IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 50 OF 2003
AND
CRIMINAL MISCELLANEOUS APPLICATION NO. 120 OF 2003

State of Goa,
through Shri Sureshkumar
H. Waingade, Food Inspector,
Directorate of Food & Drugs
Administration, Government
of Goa, Campal, Panaji, Goa. ... Applicant.

versus

1. Shri Shaba Laxman Pilankar,
   Omkar Traders,
   Shop No.36, Bicholim Market,
   Bicholim, Goa.

2. Omkar Traders,
   Shop No.36,
   Bicholim Market,
   Bicholim, Goa.

3. Shri Vasudev Damodar Kelekar,
   Shop No.36, Municipal Market,
   Bicholim, Goa. ... Respondents.

Mr. V. P. Thali, Advocate for the Applicant.

CORAM: P. V. HARDAS, J.

DATED: 5TH JUNE, 2003.

ORAL JUDGMENT

During the hearing of the Criminal Appeal No.62 of 2000, filed by the State challenging the acquittal of the Respondents, the Respondents have filed this Criminal Miscellaneous Application for dismissal of the Criminal Appeal as being barred by

limitation. The Respondents have stated that the application for leave and the Appeal ought to have been filed within 90 days whereas, the same is barred by further period of 90 or 91 days. The State on being noticed of this application has filed an application Criminal Miscellaneous Application No.120 of 2003 under Section 5 of the Limitation Act for condonation of delay. In the application, it is stated that the Appeal which has been filed by the Food Inspector attached to the Food and Drugs Administration, Panaji, Goa, was under bona fide belief that the limitation for filing an Appeal against acquittal with a leave application was 6 months under Section 378(5) of the Code of Criminal Procedure as the Complainant/Food Inspector was a public servant. Accordingly, the Appeal came to be preferred on 4th October, 1999. The Applicant/State, therefore, prays that a delay of 91 days in filing the Appeal be condoned.

2. The Respondents/Accused have filed their reply today which is taken on record. In the reply, the Respondents/Accused have denied that there was any reasonable belief that the limitation was 6 months and not 90 days. Moreover, the Respondents/Accused have pointed out that the Complainant/Food Inspector was

extremely lethargic and there was no explanation given as to why the Appeal was not filed earlier.

3. The Criminal Appeal was admitted by this Court on 13th September, 2000. The Respondents have drawn the attention of this Court that the Appeal was barred by limitation when the Respondents filed Criminal Miscellaneous Application No.50 of 2003 on 19th February, 2003 during the hearing of the Appeal. The Respondents/Accused have been acquitted relying on the Judgment of the Apex Court in the matter of **Rajdeo Sharma** v. **State of Bihar** reported in AIR 1998 SC 3281. The learned Trial Court relying on the aforesaid Judgment of the Apex Court had closed the prosecution evidence as the prosecution had not been able to complete the evidence within a period of 2 years. It may incidentally be stated that the Constitution Bench of the Apex Court in **P. Ramachandra Rao** v. **State of Karnataka** reported in (2002) 4 SCC 578 has expressed that the earlier Judgment of the Apex Court prescribing time limit for the conclusion of the trial was not a good law. Thus, the Apex Court has held that the view in **Rajdev Sharma** v. **State of Bihar** (supra) is no longer a good law.

4. According to me, the prosecution has established by giving sufficient reasons as to why an

Appeal could not be filed within the prescribed limitation. For the reasons stated in the Affidavit, I am inclined to condone the delay. Accordingly, the delay of 91 days in filing the leave application and the Appeal is condoned. Accordingly, Criminal Miscellaneous Application No.120 of 2003 is allowed and Criminal Miscellaneous Application No.50 of 2003, filed by the Respondents/Accused, for dismissal of the Appeal, is dismissed.

P. V. HARDAS, J.

RD.